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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/945,495	08/30/2001	Fernando Gonzalez	303.776US1	3528

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EXAMINER

OWENS, DOUGLAS W

ART UNIT PAPER NUMBER

2811

DATE MAILED: 04/01/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

09/945,495

Applicant(s)

GONZALEZ, FERNANDO

Examiner

Douglas W Owens

Art Unit

2811

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 04 March 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
 - (b) ☐ they raise the issue of new matter (see Note below);
 - (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☒ Newly proposed or amended claim(s) 35,42 and 45 would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: 35,42 and 45.Claim(s) objected to: 56-60.Claim(s) rejected: 33,34,36-41,43,44,46-55,61 and 62.

Claim(s) withdrawn from consideration: _____.

8. ☐ The drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☒ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). 20040304.
10. ☐ Other: _____

EDDIE LEE

SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2800

Continuation of 5. does NOT place the application in condition for allowance because: With respect to the information disclosure statement, there is no record of an information disclosure statement filed on February 28, 2002.

The curvilinear profile of objected claim 56 describes the profile of the material covering the recess, not the material covering the recess. The Examiner recognizes that the Applicant may be his own lexicographer. However, there is nothing in the specification to lead one of ordinary skill in the art to believe that the term "curvilinear profile" is being used to describe anything but a shape.

Regarding the limitation of claim 55 requiring that the second STI is disposed "in a direction parallel to the first STI". The term parallel is defined in Merriam-Webster's Collegiate Dictionary as, "extending in the same direction, everywhere equidistant, and not meeting". It can be seen that the term is not used to describe a direction, but a relationship.

Applicant's arguments with respect to the USC 112, 2nd paragraph rejection of claims 39, 40, and 48-55 are convincing.

With respect to claims 33-34, 36-38 and 41

With respect to the teaching of Nakagawa, Nakagawa teaches an epitaxial film that is localized to the recess. The epitaxial film has at least two side surfaces, a top and bottom surface, which meets the limitation of more than three.

The Applicant takes issue with the floating gate electrode (38; The control gate electrode) being referred to as an electrode. The floating gate electrode (34) performs the function of an electrode and is commonly called an electrode. In fact, there are currently approximately 4000 published documents in the patent data base that include references to a "floating gate electrode".

The recess taught by Kato is disposed directly between the source and drain, although the recess is not laterally between them, it nonetheless is disposed between the two structures. With respect to the unlabeled portion referenced by the Applicant, there was no unlabeled portion cited in the rejection of claims.

The Applicant further argues "By Applicant's disclosure, Kato only teaches the groove is between the source and another portion of the source..." It is not understood how an understanding of the Kato reference can be gleaned from Applicant's disclosure. However, limitations from the specification are not read into the claims.

Applicant asserts that the previous office action contradicts itself in stating that the top and bottom are opposite sides. It not seen how this is a contradiction. The top side is usually considered opposite of a bottom side.